

**TRANSCRIBED FROM DIGITAL RECORDING**

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

S. JAIN, et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	No. 17 C 0002
	)	
BUTLER ILLINOIS SCHOOL DISTRICT 53,	)	
et al,	)	Chicago, Illinois
	)	July 11, 2017
Defendants.	)	9:20 A.M.

TRANSCRIPT OF PROCEEDINGS - Status and Motions  
BEFORE THE HONORABLE SIDNEY I. SCHENKIER, Magistrate Judge

**APPEARANCES:**

For the Plaintiffs:	MR. RICHARD P. CARO 724 North Northwest Highway Apartment A Park Ridge, Illinois 60068
	LAW OFFICES OF FREDRICK R. HARBECKE 53 West Jackson Boulevard Suite 1510 Chicago, Illinois 60604 BY: MR. FREDRICK RAHN HARBECKE
For School District Defendants:	ANCEL, GLINK, DIAMOND, BUSH, DICIANNI & KRAFTHFER, P.C. 140 South Dearborn Street 6th Floor Chicago, Illinois 60603 BY: MS. LUCY B. BEDNAREK

PAMELA S. WARREN, CSR, RPR  
Official Court Reporter  
219 South Dearborn Street  
Room 2342  
Chicago, Illinois 60604  
(312) 408-5100

**NOTE: Please notify of correct speaker identification.  
FAILURE TO SPEAK DIRECTLY INTO THE MICROPHONE MAKES PORTIONS  
UNINTELLIGIBLE.**

**APPEARANCES: Continued**

For Defendants Massey  
and Roselli:

HINSHAW & CULBERTSON LLP  
222 North LaSalle Street  
Suite 300  
Chicago, Illinois 60601  
BY: MS. KATHERINE GEORGIA SCHNAKE

1 (Proceedings held in open court:)

2 THE CLERK: 17 C 0002, Jain, et al. versus Butler  
3 Illinois School District 53, et al., status.

4 THE COURT: All right. We have plaintiffs's counsel  
5 participating by phone.

6 Please identify yourself.

7 MR. CARO: Richard Caro for the plaintiffs.

8 THE COURT: And then we have counsel who are here in  
9 the courtroom. Why don't you each identify yourselves.

10 MR. HARBECKE: Fred Harbecke, local counsel.

11 THE COURT: For the plaintiff?

12 MR. HARBECKE: For the plaintiff.

13 MS. BEDNAREK: Lucy Bednarek for the school district  
14 defendants.

15 MS. SCHNAKE: Kate Schnake for defendants Massey and  
16 Roselli.

17 THE COURT: Okay. Are we missing anybody?

18 MS. BEDNAREK: No.

19 THE COURT: Okay. Well, we have got a number of  
20 motions that have been filed and various responses to motions.  
21 I'm prepared to address them this morning.

22 Why don't we start with the motion by the school  
23 district school board and the law firm defendants to allow a  
24 limited waiver of the attorney-client privilege. That's Docket  
25 Entry Number 88.

1           In that motion the movants seek a limited waiver with  
2   respect to three particular documents that were attached. And  
3   I have looked at them for in camera review. One was a  
4   memorandum from Ms. Roselli to Dr. Wennstrom and Kelly Voliva  
5   dated February 5th of 2016.

6           Another one is a memorandum by Ms. Massey to members  
7   of the board of the Butler School District 53, that's dated  
8   April 9th, concerning an investigatory report and findings into  
9   a grievance filed by Ms. Julka.

10          And the other is an April 10th memorandum from  
11   Ms. Massey to the board members concerning investigatory report  
12   and findings into a grievance filed by Dr. Jain.

13          And what the movants say is they want to use these  
14   documents to defend in the case, and so they want a limited  
15   waiver that would not waive any privilege in those documents  
16   and would not require them to produce anything else and may be  
17   related to those documents for which you assert privilege.

18          The motion cites as authority Rule 502(e) of the  
19   Federal Rules of Evidence. The difficulty is that 502(e)  
20   speaks to agreements between the parties. There is no  
21   agreement here with the plaintiff as to the limited waiver  
22   which you propose. The plaintiff filed a response to the  
23   motion making it clear that plaintiffs do not agree. They say  
24   that they should be entitled to, I'll call it, secondary  
25   material or source material for which you may be asserting

1 privilege that went into the memoranda or related materials,  
2 essentially a 502(b) analysis which is whether when some  
3 document that's privileged is produced, in fairness, other  
4 related documents that are privileged ought to be produced as  
5 well.

6 So I don't see how I could enter an order under Rule  
7 502(e), which depends on agreement of the parties. And 502(b)  
8 doesn't really authorize me to preempt that process absent  
9 agreement of the parties. So I deny the motion.

10 I have a question -- couple questions though just in  
11 terms of the roles of Ms. Massey and Ms. Roselli.

12 So Ms. Massey was, I think, what's referred to as the  
13 complaint manager. Is that the right term?

14 MS. SCHNAKE: Yes.

15 THE COURT: Okay.

16 MS. BEDNAREK: She was the complaint manager.

17 THE COURT: And that is as part of this investigatory  
18 process?

19 MS. SCHNAKE: Right. What she did is she just --  
20 well, I guess we can start with Ms. Roselli because she was  
21 involved before Ms. Massey was involved, if that makes sense.

22 THE COURT: Well, I actually -- I just want to find  
23 out their respective roles.

24 MS. SCHNAKE: Okay.

25 THE COURT: I understand Ms. Roselli was counsel to

1 the board.

2 MS. SCHNAKE: Yes.

3 THE COURT: Right? Okay.

4 And Ms. Massey was complaint manager.

5 MS. SCHNAKE: Yes.

6 THE COURT: And I am very bad on acronyms. The  
7 process, is it a UGP process?

8 MS. SCHNAKE: Uniform grievance --

9 THE COURT: Uniform Grievance Process?

10 MS. SCHNAKE: Correct.

11 THE COURT: And under that process is the complaint  
12 manager required to be an attorney?

13 MS. SCHNAKE: I don't believe so.

14 THE COURT: Okay. All right. So I guess one question  
15 that you might reflect on is if somebody is the complaint  
16 manager, does the fact they are an attorney necessarily mean  
17 that what they do as a complaint manager is privileged?

18 I'm not making a ruling on that. I ask you to think  
19 about that because, for instance, somebody who may be on a  
20 corporate board may have the title general counsel, vice  
21 president of finance. What the person does as vice president  
22 of finance is not invariably privileged because that person is  
23 wearing a particular hat.

24 And if the complaint manager is not required to be an  
25 attorney, then I think you ought to look at this and make a

1 determination whether in whole or in part, you know, Ms. Massey  
2 was acting as an attorney providing legal advice as opposed to  
3 a complaint manager who might not be an attorney doing basic  
4 investigatory work. So I think that that's something that you  
5 may want to look at with respect to at least her role. So that  
6 will be my ruling on the motion.

7 I know that these materials were submitted to me for  
8 in camera review. And I have looked at them, but as of this  
9 time I'm not making a privilege determination because I don't  
10 have a motion that asks me to do that.

11 Okay. The next -- I have got a lot of paper here. I  
12 have got to make sure that I don't get anything mixed up.

13 Then we have plaintiffs's motion for protective order  
14 concerning the deposition of Plaintiff A. And that's Docket  
15 Entry Number 82. And a corresponding motion to compel that  
16 deposition. That is Docket Entry Number 83.

17 Based on the back and forth in the motions and  
18 response, it appears that there is fundamentally two issues  
19 remaining. It sounds like you reached agreement on certain  
20 things. One of which is that Mr. Caro could appear remotely  
21 for the deposition, that you wouldn't have the individual  
22 defendants present at the deposition.

23 Two items that were open, it seemed to me, were, one,  
24 should I actually preside over the deposition, and the other is  
25 would the questions be, I guess, preapproved questions

1 submitted to and asked by a mental health professional?

2 Are those -- do you agree that those are fundamentally  
3 the two issues?

4 MS. BEDNAREK: Yes, that the plaintiff has requested.

5 THE COURT: Okay.

6 MS. BEDNAREK: With regard just to the minor  
7 (unintelligible).

8 THE COURT: Just to the minor, right.

9 And you agree, Mr. Caro?

10 MR. CARO: Yes, your Honor.

11 THE COURT: All right. Let me say this. You know,  
12 whenever you have a witness who is young -- and I guess  
13 Plaintiff A is now, what, 11 years old -- you know, there is  
14 always concerns because for full grown mature adults testifying  
15 in a legal process is often not a walk in the park. So I am  
16 sympathetic to the desire to provide some protection for that  
17 individual. And I am mindful of the plaintiffs's allegations  
18 concerning the mental state of Plaintiff A without making any  
19 determinations as to what that mental state is.

20 Right now, Mr. Caro, those are allegations. And I  
21 know that there are two reports that were submitted. One by a  
22 therapist who was terminated from that relationship now some  
23 time ago and hasn't seen Plaintiff A for a while, and the other  
24 by a person who is a therapist but also a relative.

25 And so I think right now you must appreciate that what



1 you are asserting in terms of child abuse and trauma are  
2 allegations, and they are not proven facts in a legal process.

3 MR. CARO: I have submitted them to show the support  
4 that --

5 THE COURT: I understand.

6 MR. CARO: -- the child --

7 THE COURT: And I have expressed to you some of the  
8 limits right now of that support in terms of my deliberation  
9 concerning what I think are fairly extreme limitations that are  
10 being proposed. I think the idea of having preapproved  
11 questions asked by somebody who is not a lawyer is a very -- it  
12 would certainly be a very unusual process. I can't say  
13 unprecedented, but very unusual process.

14 We have Plaintiff A, who is a central player in the  
15 allegations in this case. We have obviously a desire and a  
16 need to have his testimony on oath and to be tested at some  
17 level by the adversary process, which, as I say, is  
18 uncomfortable generally for people but is part of the burden  
19 that is undertaken when somebody initiates a lawsuit, whatever  
20 their years. And the idea of having preapproved questions  
21 asked by somebody who is not a lawyer makes it very difficult  
22 for follow-up questions to be asked, to be able to go where the  
23 trail of deposition answers may lead someone. So I am not  
24 going to accept the proposal that the questions be asked by  
25 some therapist and that they be predetermined questions.

1 I also am not of the mind to sit and preside over the  
2 deposition. What I will do is require that the deposition take  
3 place in my jury room, that the deposition be not only  
4 transcribed but video and audio recorded to address any concern  
5 about not simply what questions may be asked, but the manner in  
6 which they are asked. And I think that that should be a  
7 sufficient safeguard. And if any issues arise, and frankly I  
8 don't expect that there will be any issues, you know, I'll be  
9 around and we can discuss them.

10 Two other questions that I had with respect to the  
11 deposition of Plaintiff A. We have agreement about who is not  
12 going to be in the room; that is, the individual defendants.

13 Do we have agreement about who is going to be in the  
14 room?

15 MS. BEDNAREK: Well, with regard to the school  
16 district defendants, both myself and my co-counsel will be  
17 present. However only one of us, obviously, will be doing the  
18 questioning, and I don't know about --

19 MS. SCHNAKE: I'll be the one present for defendants  
20 Massey and Roselli.

21 THE COURT: So that's all from the defense contingent.

22 MS. BEDNAREK: That's correct.

23 MS. SCHNAKE: Uh-huh.

24 THE COURT: All right. And on your end, Mr. Caro, who  
25 do you want to be there?

1           MR. CARO: The defendants agreed that I can  
2 participate remotely, electronically.

3           THE COURT: Right.

4           MR. CARO: And I have also encouraged the client to,  
5 as an alternative, to use local counsel. And if they work it  
6 out, that would be great.

7           THE COURT: Okay.

8           MR. CARO: And I find that preferable.

9           THE COURT: So it would either be you and your local  
10 counsel.

11          MR. CARO: Pardon me, your Honor?

12          THE COURT: You might do it your remotely or your  
13 local counsel may be there in the room or it may be both.

14          MR. CARO: It -- it is not decided. But at this point  
15 I'm the only one who is going to be present electronically.

16          THE COURT: Okay.

17          MS. BEDNAREK: Your Honor, if I may, with regard  
18 to -- we obviously have no objection to Mr. Caro --

19          THE COURT: Yeah.

20          MS. BEDNAREK: -- appearing remotely.

21                Is there a remote capability in the jury room?

22          THE COURT: Jenny, we can set that up, can't we?

23                (Discussion off the record.)

24          THE COURT: Oh, okay. We'll do it in the courtroom.

25          MS. BEDNAREK: In the courtroom?

1           THE COURT: Yeah. We have conference tables. We do  
2 video hook ups all the time.

3           MS. BEDNAREK: That's fine, your Honor.

4           THE COURT: All right.

5           MS. BEDNAREK: And we have -- and just to let the  
6 Court know, Mr. Caro has agreed to produce Plaintiff A on  
7 August 14th --

8           THE COURT: Okay.

9           MS. BEDNAREK: -- whether -- I don't know whether the  
10 jury room is -- or the courtroom would be available on the --

11          THE COURT: That's Monday, isn't it?

12          MS. BEDNAREK: It is.

13          THE COURT: I think that that's going to be fine.

14          MS. BEDNAREK: One other thing.

15          THE COURT: What time?

16          MS. BEDNAREK: We don't --

17          We had scheduled it for 10:00 A.M., but we can work  
18 with the Court's schedule.

19          THE COURT: Okay. We'll talk about that.

20          And then what's your one other thing?

21          MS. BEDNAREK: The one other thing is whether the  
22 plaintiff's mother, who is also a plaintiff, S. Jain, will be  
23 present.

24          THE COURT: What's your position on that, Mr. Caro?

25          MR. CARO: We prefer -- I think it is best if the

1 mother is not present, but the grandmother who is a  
2 psychologist is present.

3 MS. BEDNAREK: Well, I would object to that.  
4 Obviously the mother is not only a plaintiff but a guardian. I  
5 would object to having the grandmother who is a psychologist  
6 present. She has no standing to be there.

7 THE COURT: What's the basis for the grandmother to be  
8 there?

9 MR. CARO: She has counseled the child since January  
10 of 2016, and he feels very comfortable with her. And I thought  
11 it would be less pressure on the child if she was there instead  
12 in place of the mother.

13 If your Honor thinks the grandmother shouldn't be  
14 there, then the mother should be.

15 THE COURT: All right. Well, the mother is a party.

16 MS. BEDNAREK: But having --

17 THE COURT: Any objection?

18 MS. BEDNAREK: No objection to the mother being  
19 present.

20 THE COURT: All right. The mother will be there.

21 But I think it is important to understand, Mr. Caro,  
22 that -- and I think you need to make sure that Plaintiff A  
23 understands and his mother understands that once he begins his  
24 testimony, the witness is not supposed to discuss his testimony  
25 with anybody --

1 MR. CARO: Okay.

2 THE COURT: -- whether it is his attorneys or his  
3 mother.

4 One other thing is there -- has there been any  
5 discussion about the length of time of the deposition?

6 MS. BEDNAREK: No, other than we agreed to six hours  
7 is probably unnecessary. But we haven't discussed further than  
8 that.

9 THE COURT: Well, we're really talking about Plaintiff  
10 A's testimony about what materials were consulted prior to the  
11 tests. We're talking about the interview on January 19th, I  
12 think it was.

13 MS. BEDNAREK: Right.

14 THE COURT: Is that right?

15 And then we're talking about really the aftermath.

16 MS. BEDNAREK: Also there is some allegations about  
17 how this school district allegedly treated him following that.

18 THE COURT: That's the aftermath.

19 MS. BEDNAREK: Oh, okay. I thought you were referring  
20 to damages, his alleged damages.

21 THE COURT: Well, that's part of his alleged damages,  
22 correct?

23 MS. BEDNAREK: Okay.

24 THE COURT: Okay.

25 MS. BEDNAREK: So it is not obviously --

1           THE COURT: Is there any reason it can't be done  
2 within four hours?

3           MS. BEDNAREK: I think four hours is fine.

4           THE COURT: All right. Is that all right with you,  
5 Mr. Caro?

6           MR. CARO: Yes.

7           THE COURT: And what I will do is say that four hours,  
8 but to make sure that there is a break of ten minutes at least  
9 every hour.

10          MS. BEDNAREK: That's fine.

11          THE COURT: All right. With those restrictions I will  
12 deny in part and grant in part the motion for protective order  
13 and the motion to compel.

14          MS. BEDNAREK: Your Honor, the motion to compel also  
15 addressed the S. Jain's deposition and the father's deposition.  
16 And I think that --

17          THE COURT: Do you have agreement on that?

18          MS. BEDNAREK: We do. I believe so. Is that Mr. Caro  
19 has agreed to present the mother on August 15th at our offices.  
20 And the father we proposed August 29th, but we have got -- have  
21 no confirmation yet from Mr. Caro.

22          MR. CARO: I have written several emails to him and  
23 his wife, and I haven't got anything back.

24          THE COURT: Okay.

25          MR. CARO: He's been out of work for almost a year

1 because of the notoriety of this problem, and he's -- I think  
2 he's trying to set up job interviews and will get back when,  
3 you know, he's free.

4 But at this point all I can do is keep asking.

5 THE COURT: Well, let me say this, it is seven weeks  
6 between now and August 29th, and I certainly am hopeful that he  
7 obtains employment. But it would seem to me that during that  
8 time period it should not be difficult to carve out a day for  
9 the deposition.

10 MS. BEDNAREK: And just if I could add as well, we  
11 have already attempted to schedule in July and early August.  
12 And August 29th was the date that plaintiff had suggested  
13 was -- that Mr. Gold (phonetic) would be available, and yet we  
14 haven't received confirmation.

15 THE COURT: All right. Well, here's what I will do,  
16 since you have agreement that the plaintiff's mother will be  
17 deposed on August 15th, we'll put that into the order. And  
18 with respect to the plaintiff's father, I will order that his  
19 deposition take place by no later than August 31st. And I want  
20 a status report in seven days indicating what date has been  
21 set.

22 MS. BEDNAREK: Okay.

23 THE COURT: And obviously depositions of the parents  
24 do not need to be in my courtroom.

25 Why don't we take, if we can -- Mr. Caro, would you



1 stay on the line? But I want to take up another couple cases  
2 before we go on to the next items. All right?

3 MR. CARO: Yes.

4 (Discussion off the record.)

5 MR. HARBECKE: Your Honor, may I be excused then?

6 THE COURT: If it is okay with your co-counsel.

7 MR. HARBECKE: Mr. Caro, if you don't mind, I have  
8 other court matters I need to attend to.

9 Mr. Caro?

10 THE COURT: Mr. Caro, can your co-counsel leave to go  
11 to some other court matters?

12 MR. CARO: Oh, yes, your Honor. Sure.

13 THE COURT: Thank you.

14 MR. HARBECKE: Thank you.

15 (Whereupon the Court turned his attention to other matters  
16 on his call.)

17 THE CLERK: 17 C 0002, Jain, et al. versus Butler  
18 Illinois School District 53, et al., status and motion hearing.

19 THE COURT: All right. Mr. Caro, are you still with  
20 us?

21 MR. CARO: Yes, your Honor.

22 THE COURT: Very good. And we have counsel for the  
23 defense here.

24 MS. BEDNAREK: Yes.

25 THE COURT: All right. So now I want to turn to the

1 plaintiffs's motion to compel. That's Docket Entry Number 86.  
2 And then Massey and Roselli motion to compel, Docket Entry  
3 Number 92.

4 MS. BEDNAREK: Your Honor, before we do that, we would  
5 like to readdress the motion for entry of an order permitting a  
6 limited waiver of attorney-client privilege that your Honor  
7 previously denied. So my office -- we drafted that. And when  
8 we referenced Rule 502(e), it -- I remembered here that was  
9 originally an agreed motion.

10 I have an email, that I actually just checked with my  
11 phone, back on June 1st. It was an agreed motion to have a  
12 limited waiver, and that's why we reference that. And I  
13 suppose later, a few weeks later, after Mr. Caro changed his  
14 position on it, we probably should have taken it out, and that  
15 was maybe an error on our end.

16 But I think that the bigger issue, that I just want  
17 the Court to be aware of, that the documents referenced in all  
18 those reports have been produced a couple times, in the FOIA  
19 request and in this case. So if the concern is that this  
20 report is referencing materials that they don't have access to,  
21 that's not really that case. I just want the Court to be aware  
22 of that.

23 THE COURT: I understand.

24 MS. BEDNAREK: Okay.

25 THE COURT: But you are still asking me to enter an

1 order that is saying something that you treat as privileged --

2 MS. BEDNAREK: Right.

3 THE COURT: -- should be produced without it being a  
4 waiver. And we're talking about an intentional production.  
5 Right? So we're not talking about, you know, 502(d), which  
6 gives me the authority to say that the production of something  
7 privileged is not a waiver of the privilege in that document in  
8 federal or state court. Okay?

9 That really was put into place to deal with, I'm  
10 producing lots of documents and maybe something slips through  
11 and, you know, I want to protect against that. It really  
12 doesn't deal, in my judgment, with an intentional decision to  
13 use something that you're claiming is privileged. That really  
14 is a 502(b) matter as to whether there is other things that are  
15 privileged, that are being withheld, that relate to what has  
16 been produced and whether, in fairness, that should also be  
17 produced.

18 You know, I don't know what the full universe of that  
19 is. And we'll talk in a minute about the privilege log issue.  
20 But 502(e) is -- and 502(e), as I have said, really addresses  
21 agreements between the parties.

22 So, Mr. Caro, is it true that at some earlier point  
23 you sent counsel an email saying that you were agreeable to  
24 their proposal to produce these three documents without it  
25 being a waiver of privilege in other documents?

1           MR. CARO: Early on. But then I withdrew that as I  
2 thought about it. The Massey report is a (unintelligible)  
3 document. And I said, I'm happy to get it if they get the  
4 circuit judge's permission to unseal it. They applied to have  
5 it sealed, and language prevented my client from giving me a  
6 copy of that document. That was done intentionally and --

7           THE COURT: Well, Mr. Caro --

8           MR. CARO: -- I don't want to do anything --

9           THE COURT: -- would you like the document?

10          MR. CARO: Yes.

11          THE COURT: Okay.

12          MR. CARO: Well --

13          THE COURT: Well, is there a way that the parties can  
14 agree to the production of those three documents, and you can  
15 take a look at them then?

16          MR. CARO: On the -- excuse me, your Honor. I only  
17 want the Massey report, fact report.

18          THE COURT: Well --

19          MS. SCHNAKE: Which one? I mean, there is --

20          MR. CARO: Not the other privileged documents because  
21 I think it would be unfair and unrepresentative of what  
22 happened.

23          MS. SCHNAKE: Well, your Honor, there are two Massey  
24 reports, and then one Roselli report.

25          THE COURT: But what he's saying is he wants one -- he

1 wants the Massey report concerning the Jain matter.

2 MS. SCHNAKE: Uh-huh.

3 MR. CARO: Right.

4 THE COURT: And he doesn't want --

5 MR. CARO: The fact report that was submitted and --

6 THE COURT: Mr. Caro? Mr. Caro?

7 MR. CARO: Yes.

8 THE COURT: You're going to have to indulge and not  
9 jump in whenever you feel like it.

10 MR. CARO: I'm sorry, your Honor.

11 THE COURT: Thank you.

12 But he's concerned, I guess, that if the other ones  
13 are produced because you want to use them, he may be  
14 compromised because he doesn't have whatever else there may be.

15 Let me say this. Right now I'm not going to reverse  
16 my ruling. When we talk about the privilege log, we can circle  
17 back to this. Okay?

18 All right. So I would like to then go to the  
19 competing -- not really competing, but the two motions to  
20 compel, 86 and 92. And I have to tell you that in reading the  
21 discovery requests and the responses, it made me think about  
22 Rule 1, you know, which says that discovery is supposed to be  
23 calculated to achieve the just, speedy, and inexpensive  
24 determination of the case.

25 And the amendment to Rule 1 in December of 2015 made

1 it clear that that's not simply the responsibility of the Court  
2 in overseeing the discovery process, but it is the  
3 responsibility of the parties to do that. And the  
4 responsibility of the parties, obviously, means also their  
5 attorneys or their representatives in the litigation.

6 And, you know, when I looked at the interrogatories  
7 and the responses, well, I really concluded that they are so  
8 far removed from what Rule 1 has in mind that at this point I  
9 don't see the interrogatory process here being a useful  
10 process.

11 Mr. Caro, I've to say that I think you find it  
12 difficult to ask an interrogatory in a way that's not  
13 argumentative. I think the defense, the Massey and Roselli  
14 motion to compel looking at some of their interrogatories,  
15 thinking in particular about Numbers 4 and 5, they are  
16 basically getting everything that's relevant to the case.

17 I just don't see that that's a useful process. The  
18 responses are not helpful. I don't think that the plaintiffs's  
19 responses to the Massey and Roselli interrogatories, the few  
20 that are answered, are really responsive. They simply set  
21 forth argument about the plaintiffs's position. I think that  
22 there is rather creative counting in terms of the numbers of  
23 depositions and subparts that say I don't have to answer  
24 anything after number five.

25 The defense did not identify by Bates number what

1 documents were produced responsive to the interrogatories. I  
2 had ruled that on -- as matter of Rule 33(d) have to identify  
3 the specific documents, and all I had -- I'm not talking about  
4 the privilege log now. I'm not talking about identifying the  
5 documents on the privilege log because as of right now what's  
6 on the privilege log, the defense has taken the position they  
7 don't have to produce that. So prior to a ruling on that  
8 assertion, I don't think it is productive to make them identify  
9 by Bates number what each of those logged documents would  
10 relate to with respect to an interrogatory, especially given  
11 the large volume of those documents.

12 On the other hand, interrogatory responses say, see  
13 everything that Massey and Roselli produced. You know, what I  
14 am hearing from the defense is that's a lot of pages. And what  
15 you're saying is that all of those pages are responsive to  
16 every single interrogatory. I just don't accept that.

17 So I draw the conclusion that we're going to be much  
18 better off at this point with me terminating the right to serve  
19 any further interrogatories or other written discovery. That  
20 the parties should resort to the deposition process. And I  
21 think that some of these questions that are asked in the  
22 interrogatories, there is a better chance of getting productive  
23 information where you have an iterative process, where you have  
24 the opportunity to follow up on questions, and, frankly, where  
25 people have less of an opportunity to play games when they're

1 sitting in the witness chair under oath.

2           So let me turn for a moment with -- then to the  
3 plaintiffs's motion. With respect to some of the things that  
4 Mr. Caro raised, there was a general objection to the failure  
5 of the defense to provide support for the Wennstrom  
6 determination that there was cheating. That's in paragraph 6  
7 of the motion. And paragraph 8 of the motion, a failure to  
8 provide certain GOB questions. None of those were tied to  
9 specific requests as were some of the other issues raised, so  
10 I'm not ruling on those.

11           Paragraph 9 talks about the failure to identify who  
12 the substitute teacher was who filled in in the classroom when  
13 Ms. Owen was at the -- I'll call it an interview, discussion.  
14 I won't call it an interrogation, and I won't call it a tea  
15 party. But who was in the room filling in for Ms. Owen on the  
16 idea that that person could be examined, as I understand it, to  
17 determine whether Ms. Owen was away from the classroom for more  
18 than an hour to support the plaintiffs's version about how long  
19 the interview took place or was only for 15 minutes to support  
20 the defense version.

21           And I guess that with respect to the interrogatories,  
22 some were withdrawn where that question was asked of certain  
23 people. The people who were -- it was asked of said they  
24 didn't know who it was. So I just have a simple question.  
25 Does the defense know who sat in for Ms. Owen in the room?



1 MS. BEDNAREK: I don't.

2 THE COURT: Nobody knows.

3 MS. BEDNAREK: It would have to be -- we would have to  
4 do a full school whole of everyone that would have been  
5 available and -- because we have aides may have sat in.

6 THE COURT: Have you asked Ms. Owen whether she  
7 recalls? Because it was Ms. Owen's classroom, right?

8 MS. BEDNAREK: I believe that she does not recall  
9 either.

10 THE COURT: Because --

11 MS. BEDNAREK: I can --

12 THE COURT: Because this interrogatory that asks for  
13 this information was withdrawn as to her.

14 MS. BEDNAREK: Right.

15 THE COURT: So my question is since it was Ms. Owen  
16 whose classroom it was, it was -- presumably the person was in  
17 there when Ms. Owen left the classroom. The person was in  
18 there when Ms. Owen returned to the classroom. Can we figure  
19 that out?

20 MS. BEDNAREK: Your Honor, I will -- we will do our  
21 best to investigate that further. It may be -- the response  
22 may be the same of I don't know, but we will due diligence in  
23 investigating that.

24 THE COURT: Okay. Provide your information that you  
25 have in response to that by July 21st.

1           There are a number of interrogatories that are call  
2 out with respect to the individual defendants that suffered  
3 from the situation I described, failure to identify by Bates  
4 number what's being referenced in the Rule 33(d) response,  
5 instead generically saying Massey and Roselli documents.

6           Were those -- the ones that were produced, were they  
7 Bates numbered?

8           MS. SCHNAKE: Yes.

9           THE COURT: Okay.

10          MS. SCHNAKE: There is 4000 documents  
11 (unintelligible.)

12          THE COURT: All right. Okay.

13          MS. BEDNAREK: There is 4000 pages.

14          THE COURT: Right. So I want you to go back and  
15 provide whatever for every interrogatory where you said, see  
16 Roselli and Massey documents, what Bates numbers are those  
17 documents pertaining to the specific interrogatories. I  
18 ordered that before. I don't think my order was unclear. And,  
19 you know, Massey and Roselli say, well, you know, that really  
20 wasn't pertaining to us because the motion that led to that  
21 order wasn't pertaining to Massey and Roselli. But I see no  
22 reason they shouldn't do it, so do it. That is to be done by  
23 July 21st.

24          MS. SCHNAKE: Your Honor, I am in depositions all next  
25 week. I --

1 THE COURT: Are you the only attorney on this one?

2 MS. SCHNAKE: I am not. However, it -- based on the  
3 number of records, I just think -- I'm just requesting an  
4 additional seven days to the 28th.

5 THE COURT: All right. July 28th.

6 One of the interrogatories that is the subject of the  
7 motion is for Voliva, Number 27, documents concerning her  
8 resignation.

9 Mr. Caro, would you tell me your -- briefly your  
10 thought about the relevance of that?

11 MR. CARO: The suspicion is that it was related to or  
12 what happened with the -- with this cheating activity and  
13 response. She -- she resigned a few days before the  
14 (unintelligible) school year and no explanation. And the  
15 thinking is that it may have been related -- it would probably  
16 have (unintelligible) resignation and probably related to  
17 something that happened with the -- with the investigation and  
18 follow up that -- missing documents, the recording that  
19 disappeared, so on and so forth.

20 THE COURT: Okay. Response?

21 MS. BEDNAREK: Your Honor, her resignation was  
22 voluntary. She was not terminated, and it did not relate to  
23 this incident at issue.

24 THE COURT: All right. Produce any documents  
25 concerning her resignation.

1 MS. BEDNAREK: Well, your Honor, I'm not sure whether  
2 the protective order in place covers her personnel records. If  
3 it does not, we will need to file a motion for protective order  
4 regarding that.

5 THE COURT: Well, no, is there any objection to it  
6 being produced pursuant to the protective order, Mr. Caro.

7 MR. CARO: Oh, no, not at all.

8 THE COURT: All right. You can do that by July 28th.

9 MS. BEDNAREK: Okay.

10 THE COURT: All right. With -- that's what I will  
11 order compelled from the specific interrogatory responses  
12 raised in the plaintiffs's motion. Otherwise the motion is  
13 denied.

14 With respect to the Massey, Roselli motion, for the  
15 reasons I have earlier stated concerning the interrogatory  
16 responses, I deny the motion as to the interrogatory -- the  
17 motion to compel as to the interrogatories. And I -- in saying  
18 that, I want it to be clear that I don't endorse the  
19 plaintiffs's approach to the way you answered the  
20 interrogatories, but I just don't think that going back,  
21 especially given the discovery schedule we have, is going to  
22 yield a productive result. As I say, I think it is time to get  
23 past this process. We'll get people under oath and have them  
24 testify.

25 Now with respect to the document requests, I have

1 taken a look at those, and I would indicate that there is  
2 substantial overlap between the document requests and the  
3 interrogatories anyway. So I will grant the motion to compel  
4 as to Document Requests 5 through 8, 12 through 13, and 19  
5 through 34.

6 With respect to Requests 9 through 11 and 14 through  
7 17, those all go to potential damage claims. And I will order  
8 those to be produced, only to the extent that the plaintiff is  
9 seeking damages for those particular items.

10 So that says -- that means, Mr. Caro, with respect to  
11 those requests, you answer them either by producing documents  
12 or saying, we are not seeking damages based on this -- these --  
13 or we're not seeking this category of damages.

14 I deny the motion as to Document Requests 1  
15 through -- 1 and 2 and Number 4 as overbroad.

16 Request 3 is duplicative of the Rule 26(a)(1)  
17 disclosures.

18 Request 35, which seeks trial exhibits, and that's  
19 going to be a matter of the pretrial order scheduling.

20 Request 36, which seeks discovery relied on in a  
21 written discovery responses, which I don't think is no  
22 longer -- is any longer relevant given my ruling on the  
23 interrogatories.

24 I have Request 37, which seeks expert disclosures, and  
25 that will be for Judge Guzman to set any schedule for expert

1 disclosures.

2 The only remaining item on the request is 18, and  
3 that's other litigation involving the plaintiffs. I guess one  
4 question that I have, Mr. Caro, is whether the plaintiffs have  
5 been involved in other litigation.

6 MR. CARO: The only other litigation I know of is this  
7 -- related DuPage County Circuit Court case.

8 THE COURT: All right. Well, it wouldn't have been  
9 very hard to say that, would it?

10 MR. CARO: No.

11 THE COURT: Well, I always wonder why people argue  
12 about things that don't drop to the bottom line, so I will  
13 require you to answer that request.

14 If there is something other than DuPage County  
15 litigation, then disclose it.

16 MR. CARO: Yes, your Honor. One --

17 THE COURT: Now I was going to give you until July  
18 28th to produce those documents, which tracks With the deadline  
19 I have given to the defense. Is that okay with you?

20 MR. CARO: Yes, your Honor.

21 THE COURT: All right.

22 MR. CARO: In terms of producing documents, may we  
23 refer to documents that were already produced?

24 THE COURT: Already produced by whom?

25 MR. CARO: By -- on March 2nd --

1 THE COURT: No.

2 MR. CARO: -- I produced --

3 THE COURT: Mr. Caro, produced by you?

4 MR. CARO: By plaintiffs. They were produced by  
5 plaintiff.

6 THE COURT: You can certainly do that, but I -- just  
7 as have wanted, and I'm requiring them to identify by Bates  
8 number the documents, you should do the same.

9 So that, I think, takes care of the motions that have  
10 been filed. I want to talk for a moment about the privilege  
11 log which, judging by the CD-ROM I got, is roughly 4400  
12 documents, 37,000 plus pages.

13 Is that right?

14 MS. BEDNAREK: Right.

15 THE COURT: Okay. Now it seemed like the documents  
16 all had the RS prefix. So they did all come from the files of  
17 Robbins Schwartz?

18 MS. BEDNAREK: Yes, that was our Bates numbering that  
19 we put on the documents.

20 THE COURT: Okay. They all came from those files.

21 MS. BEDNAREK: Yes.

22 THE COURT: Okay. Now does the log identify who were  
23 CCs on the various emails as opposed to simply the direct  
24 recipients?

25 MS. BEDNAREK: I don't know that there is another

1 column for that. I can add the column to include the CCs. I  
2 didn't think about that.

3 THE COURT: Well, that -- I mean, that's kind of  
4 important because one way somebody, even with a document that's  
5 privileged, may lose the privilege is if they have disclosed it  
6 to somebody who is outside the warm embrace of the privilege.  
7 So you need to know who gets it.

8 MS. BEDNAREK: Right.

9 THE COURT: Okay. Now there seems to be a lot of  
10 material in there that's about -- that is during the state  
11 court matter --

12 MS. BEDNAREK: Uh-huh.

13 THE COURT: -- and in this federal court matter. And  
14 so I'm wondering whether you have logged documents that are  
15 between the defendants here and counsel concerning the lawsuit.

16 MS. BEDNAREK: Concerning this lawsuit --

17 THE COURT: Yeah.

18 MS. BEDNAREK: -- or the state court lawsuit?

19 THE COURT: Either.

20 MS. BEDNAREK: I believe I logged things for the state  
21 court lawsuit. I -- I'm not sure for this lawsuit because I  
22 believe that the request wouldn't have included what -- if --

23 THE COURT: Well --

24 MS. BEDNAREK: You know, I don't think that it would  
25 have included that.



1           THE COURT: Well, let me -- Mr. Caro, I take it that  
2 you're not interested in having them log communications that  
3 they saw are privileged. Well, let me ask this. Do you want  
4 them to log things that they say are privileged that --

5           MR. CARO: No. Part of our problem --

6           THE COURT: -- post-date -- you need to let me finish  
7 my --

8           MR. CARO: Part of our problem is --

9           THE COURT: -- question.

10          MR. CARO: -- we have thousands of documents listed in  
11 the privilege log that weren't requested.

12          THE COURT: Mr. Caro?

13          MR. CARO: I'm not interested in attorney-client  
14 communications --

15          THE COURT: Mr. --

16          MR. CARO: -- in the circuit court case or in this  
17 court case.

18          THE COURT: Okay.

19          MR. CARO: They are listed.

20          THE COURT: All right. And in terms of saying in this  
21 case or in the Circuit Court case, as a barometer for that can  
22 we say that postdate the filing of those cases?

23          Mr. Caro?

24          MR. CARO: Oh, I'm sorry. I -- I think there were  
25 some in August, possibly July, but I would have to go through

1 it. But --

2 THE COURT: No, what I am asking you --

3 MR. CARO: -- we were --

4 THE COURT: -- if we said --

5 MR. CARO: Oh.

6 THE COURT: -- the list should not include documents  
7 for which privilege or work product was asserted, that postdate  
8 the state court suit or the federal suit.

9 MR. CARO: Yes, your Honor.

10 THE COURT: Okay. So cut those out.

11 MR. CARO: Yes.

12 MS. BEDNAREK: So the date that the state court was  
13 filed, anything after that --

14 THE COURT: Yes.

15 MS. BEDNAREK: -- is --

16 THE COURT: Right.

17 MS. BEDNAREK: -- off the table.

18 THE COURT: Okay?

19 MS. BEDNAREK: Fine. Okay.

20 THE COURT: So that should skinny it down quite a bit,  
21 right?

22 MS. BEDNAREK: Some. Not -- I mean, there is -- well,  
23 we'll get to it, but there is a lot in there.

24 THE COURT: Now the log doesn't always identify, at  
25 least to my untrained eye in your matter, who is an attorney.

1 So is Heidi Katz an attorney?

2 MS. BEDNAREK: If it is from the Robbins Schwartz --

3 THE COURT: No, I don't want you to tell me what's in  
4 a file. I want you to tell me who is on attorney.

5 Is Phil Gerner an attorney?

6 Is Catherine Locallo an attorney?

7 MS. BEDNAREK: Locallo is. Yes, she is.

8 THE COURT: Okay. You have got to identify who the  
9 attorneys are. For somebody to make a judgment about whether  
10 there is a privilege, you want to know who is the attorney.  
11 Because there are some that aren't involving Massey or Roselli,  
12 and it is not clear who the attorney is.

13 MS. SCHNAKE: If it is an email that was sent from,  
14 for example, Massey's assistant or Roselli's assistant, I don't  
15 know that it -- I guess I can distinguish that it is from the  
16 assistant, but the -- it wouldn't matter either way, I don't  
17 think, as far as privilege is concerned if it is within the law  
18 firm.

19 THE COURT: Well, I don't know where -- again I don't  
20 know who these people are. See, I don't know what was  
21 generated outside the law firm and provided to the law firm --

22 MS. SCHNAKE: Okay.

23 THE COURT: -- or versus what was directly sent to the  
24 law firm or generated by the law firm. That's where this  
25 ambiguity becomes a potential issue.

1           What was the date that Massey was engaged to be the  
2 complaint manager, do you know?

3           MS. SCHNAKE: I don't (unintelligible), and it would  
4 have been shortly after the --

5           THE COURT: Okay.

6           MS. SCHNAKE: -- the complaint was filed.

7           THE COURT: Okay. The complaint?

8           MS. BEDNAREK: The --

9           THE COURT: The UGP.

10          MS. SCHNAKE: -- investigation complaint, right.

11          THE COURT: And Roselli, when did she begin providing  
12 advice to Wennstrom and the board regarding this matter?

13          MS. SCHNAKE: For this case --

14          THE COURT: What --

15          MS. SCHNAKE: -- the 19th. I believe it was the 19th  
16 that was the first that I found, I think.

17          THE COURT: The 19th of?

18          MS. SCHNAKE: January.

19          THE COURT: Okay.

20          MS. SCHNAKE: 2016.

21          THE COURT: Prior to or after the discussion with  
22 Plaintiff A?

23          MS. SCHNAKE: That I don't know.

24          THE COURT: Okay.

25          MS. SCHNAKE: I could find out --

1 THE COURT: Right.

2 MS. SCHNAKE: -- the exact time that they --

3 THE COURT: I think you should take a look at that  
4 because that may bear on issues concerning privilege concerning  
5 whatever notes there may be or whatever happened prior to  
6 January 19th. Okay?

7 My point here is that if people take notes, they  
8 prepare things, it may be that there is factual material there  
9 that is not privileged. Communication of it is privileged, but  
10 that doesn't make the underlying initial creation privileged,  
11 especially if it predated an attorney-client relationship. So  
12 I think you need to take a look at those matters.

13 Now you said that various source material has been  
14 produced that's -- in -- reflected in the memos that you  
15 submitted to me for in camera review.

16 MS. BEDNAREK: I'm sorry, your Honor, can you repeat  
17 that?

18 THE COURT: You submitted to me the various memos for  
19 in camera review.

20 MS. BEDNAREK: Correct.

21 THE COURT: And you said that various source material  
22 referenced in there has been produced.

23 MS. BEDNAREK: All the exhibits have been produced.

24 THE COURT: Okay. Did Wennstrom or Voliva -- is it  
25 Voliva or --

1 MS. BEDNAREK: Voliva.

2 THE COURT: Voliva. -- or Owen make notes of the  
3 interview with Plaintiff A?

4 MS. BEDNAREK: I don't believe that there are any  
5 notes that are still in existence.

6 THE COURT: Okay. So which it does not exactly  
7 address my question.

8 MS. BEDNAREK: Right. If there were any notes --

9 THE COURT: Did they take -- did they take notes?

10 MS. BEDNAREK: Not to my knowledge, your Honor. But I  
11 will have to double check on that.

12 THE COURT: Okay.

13 MS. BEDNAREK: Actually that's not right -- I  
14 misspoke. I believe that there were some notes, and I believe  
15 that -- I will to double check on that too.

16 THE COURT: Do you know whether those still exist?

17 MS. BEDNAREK: I don't. If they -- I don't know that  
18 either.

19 THE COURT: All right. I think you need to look at  
20 that.

21 MS. BEDNAREK: True.

22 THE COURT: There is a discussion of time sheets.  
23 And, Mr. Caro, you reference at some point -- well, let me ask  
24 this question. The invoices that have been produced, do they  
25 show what work was done on any particular day or are they

1 simply tabulation of hours and rates?

2 MS. BEDNAREK: Time entries. So you will have -- I'm  
3 sorry, I thought -- are you asking him or --

4 THE COURT: Yeah. Go ahead, Mr. Caro.

5 MR. CARO: The invoices that were produced from  
6 September 2016 and forward, that's for the period in issue.  
7 They said they have would produce those invoices. And I  
8 pointed out that time sheets are preferred because they would  
9 show work done that was not billed.

10 THE COURT: Okay. So there is an assumption there,  
11 which is that time was written off.

12 MR. CARO: Yes.

13 THE COURT: Was time written off?

14 MR. CARO: And it may be -- and it may be important.

15 MS. BEDNAREK: I have gone through some of the  
16 invoices, and I have seen that there are entries where the time  
17 wasn't written off but the client was charged.

18 THE COURT: Let me say that -- I guess what I would  
19 say is let's forget for the moment about whether all the time  
20 was billed. The invoice shows the work that was done.

21 MS. BEDNAREK: Yes.

22 THE COURT: On a day-by-day basis, rights?

23 MS. BEDNAREK: Yes.

24 THE COURT: By the attorneys who did it.

25 MS. BEDNAREK: Yeah.

1 THE COURT: And how much time they spent.

2 MS. BEDNAREK: Yes.

3 THE COURT: The invoices show that.

4 MS. BEDNAREK: Uh-huh.

5 THE COURT: So do the time records show any of those  
6 things that the invoices don't show?

7 MS. BEDNAREK: I haven't even seen time records. But  
8 all the time record would be would be a detailed entry that's  
9 on the invoice.

10 THE COURT: Well, and my point that you guys are  
11 having certain different perhaps assumptions. Mr. Caro's  
12 assumption is if time wasn't billed, then the work that was  
13 done wasn't shown to the client on the invoice.

14 You're assumption is that if there was a write off,  
15 that work was shown, but the client wasn't charged for that  
16 work.

17 MS. BEDNAREK: Correct, because I have seen that on  
18 the invoices. It was a --

19 THE COURT: Right.

20 MS. BEDNAREK: -- point (unintelligible).

21 THE COURT: So why don't you just look to verify that  
22 there is nothing on the time sheets that isn't on the invoices  
23 in terms of what time was spent on each day.

24 MS. BEDNAREK: I can do that. I think that -- and we  
25 have put this in our motion. I think the concern is what --



1 I'm not sure what that has to do with anything. This isn't a  
2 malpractice case.

3 THE COURT: I know.

4 MS. BEDNAREK: They are not alleging fraudulent  
5 billing. It would be privileged anyway. You know, so I'm not  
6 sure where -- to --

7 THE COURT: Well --

8 MS. BEDNAREK: -- where that's taking us.

9 THE COURT: -- you have given him the invoices, right?

10 MS. BEDNAREK: Because it was produced in underlying  
11 FOIA. And I figured if they got it in the FOIA, they may as  
12 well get it in this case as well.

13 THE COURT: Well, if they got it in the FOIA, then is  
14 it privileged?

15 MS. BEDNAREK: No.

16 THE COURT: Okay.

17 MS. BEDNAREK: The invoices were redacted.

18 THE COURT: Okay.

19 MS. BEDNAREK: And they received redacted copies of  
20 those --

21 THE COURT: Okay.

22 MS. BEDNAREK: -- so that's not privileged. But the  
23 time at the -- the billing entries and whatever system they  
24 used to enter in their time, that's a different issue.

25 THE COURT: All right. Is there a particular point in

1 time at which you consider this important, Mr. Caro?

2 MR. CARO: Yes, your Honor. The pre-January 19th  
3 period was -- the January invoice is not listed as one that  
4 would be produced. And Wennstrom seemed to be very scrupulous  
5 about clearing everything with Roselli. And there is this big  
6 gap from the start of the investigation, and then -- and then a  
7 first century in the privilege log of January 19th.

8 THE COURT: So -- and I heard counsel today say that  
9 Roselli first started providing advice to the board and to  
10 Wennstrom concerning this particular academic matter on January  
11 19th.

12 MS. BEDNAREK: That's my understanding of it. From  
13 what I have read on the privilege log, that's the right  
14 belief.

15 THE COURT: All right. So -- but that kind of  
16 sharpens the focus, right? So why don't you look at time  
17 records that are in the month of January prior to the 19th to  
18 verify this. Okay?

19 MS. BEDNAREK: We can do that.

20 THE COURT: Because that's what you are focusing on,  
21 right, Mr. Caro?

22 MR. CARO: Yes.

23 THE COURT: Okay.

24 MR. CARO: Because -- of other invoices -- we haven't  
25 seen the invoices of the first half of 2016, but I assume they

1 will be comparable of the ones that were produced.

2 THE COURT: Okay.

3 MR. CARO: And my recollection is they do not show --  
4 the ones that were produced do not show unbilled charges.

5 MS. BEDNAREK: I can email him and point him to it.

6 THE COURT: All right.

7 MS. BEDNAREK: You know, I don't know what else --

8 THE COURT: Well, I think that you should verify on  
9 the defense side your points about what the invoices show.  
10 That when time is written off, it is not that they're writing  
11 off the entry as -- they're not eliminating the entry, they're  
12 simply revealing that but not charging for it.

13 MS. BEDNAREK: Uh-huh.

14 THE COURT: Correct?

15 MS. BEDNAREK: Right.

16 THE COURT: All right. So you should talk about that  
17 among each other and see if you can't resolve that particular  
18 issue.

19 So circling back now to the privilege log.

20 MS. BEDNAREK: Yes.

21 THE COURT: If we are going to eliminate documents  
22 that are post suit that you logged, state or federal, that  
23 should narrow it quite a bit.

24 So then with respect to what is left, is it your  
25 position, Mr. Caro, that none of them is privileged?

1           MR. CARO: No. Oh, no, your Honor. I think there are  
2 privileged communications --

3           THE COURT: Okay.

4           MR. CARO: -- but --

5           THE COURT: All right. Well, here's what -- and I had  
6 asked everybody before to come up with some method to sample  
7 that. Have you done that? Or was everybody simply too stunned  
8 by the volume to even embark on the effort yet?

9           MR. CARO: I started that, your Honor, and I'm almost  
10 complete. And I have to cut down what my requests are.

11          THE COURT: Okay. Well, again, I don't know if you  
12 are requesting things that are post litigation, but that would  
13 be an easy place to cut down.

14          MR. CARO: No, it is just for the period that I am  
15 interested in, the proceedings at the school level.

16          THE COURT: Okay. And what I usually do on these  
17 types of situations -- and let me ask Mr. Caro, you say you're  
18 almost done. How many have you identified thus far?

19          MR. CARO: Oh, I haven't counted up. There is a good  
20 number. Part of the problem is there are many, many  
21 duplicates, and -- and, you know, and there could be four, five  
22 copies of the same document, and I will try to select one.

23          THE COURT: Okay.

24          MR. CARO: It would be helpful if -- if they could  
25 just tell me the category that applies to Roselli, the category

1 that applies to Massey, the category numbers that reply to  
2 (unintelligible) school officials.

3 THE COURT: I'm not sure what you said.

4 MR. CARO: The item --

5 THE COURT: I'm not sure I know what you mean by  
6 replied to.

7 MR. CARO: Oh, okay. The Bates numbers appear to be  
8 assigned to -- coming out for certain -- certain person's file.  
9 So that an email sent from Roselli to Wennstrom to Voliva may  
10 be produced three times and possibly more duplicates.

11 MS. BEDNAREK: I can address that. When we upload  
12 documents into our reviewer, it automatically deduplicates so  
13 that there aren't duplicative documents. They may have similar  
14 subject matters and they may have similar subject lines in  
15 emails and similar persons, but it is not necessarily the same  
16 document because it would have been eliminated when we upload  
17 documents.

18 MR. CARO: Generally my past experience, you only  
19 produce duplicates, which are different, you know, this  
20 (unintelligible) change.

21 THE COURT: So one of your many disagreements, as I  
22 hear defense counsel saying, that they have a system that  
23 deduplicates the production. So she's saying there aren't  
24 duplicates in the sense of identical documents.

25 And you're saying there are in the sense of identical

1 documents, at least that's what I understand you to be saying,  
2 Mr. Caro.

3 But I can't mediate that right now or decide that  
4 issue right now. So when do you think you'll be done with your  
5 process, Mr. Caro, of going through the log documents and  
6 identifying the ones you may be interested in?

7 MR. CARO: This week.

8 THE COURT: Okay.

9 MS. BEDNAREK: And just to add to that, I think maybe  
10 -- because Mr. Caro and I had spoken last week and we kind of  
11 came to an agreement on some of the revisions that need to be  
12 made to the log --

13 THE COURT: Yes.

14 MS. BEDNAREK: -- and I need to make those revisions.  
15 I would like to think I would be done by Friday of this week.  
16 Monday at the latest. I think maybe it would help him if I  
17 give him a more detailed log for him than to identify what  
18 documents, just to get a time frame.

19 THE COURT: Okay. That's fine. Can you do that by  
20 the end of the week?

21 MS. BEDNAREK: I will try -- yes, I --

22 THE COURT: Okay.

23 MS. BEDNAREK: I will try really hard to get that done  
24 by Friday.

25 THE COURT: All right. And then I don't know if you

1 can also go through, and for the people who are not identified  
2 in terms of their function -- you don't even have to do it on  
3 every entry. But go through and create a key that says, Person  
4 A, attorney at Butler Rubin.

5 And, B --

6 MS. BEDNAREK: Person A, assistant --

7 THE COURT: -- assistant. C, tech person at whatever.

8 Just so when you're going through it, you can go  
9 (unintelligible) and know who that is.

10 Again, it may that be Mr. Caro knows who that is, but  
11 I don't. And if in the end I have to decide any of this, I  
12 need to know that. Okay?

13 But then you don't have to go through line by line and  
14 change the log, you just have to create a master key. All  
15 right?

16 MS. BEDNAREK: Okay.

17 THE COURT: So let's include that in your task.

18 MS. BEDNAREK: Okay.

19 THE COURT: All right. And then do you think that you  
20 all could meet and confer about the privilege log documents by  
21 just say a week or ten days after that?

22 MS. BEDNAREK: Sure.

23 THE COURT: All right. So I'll let -- do you think  
24 the 24th you can do that?

25 MS. BEDNAREK: Yes.

1           THE COURT: Okay. Now one of the things that you can  
2 do -- and you'll see what the volume is of those documents.  
3 You could reach various agreements. You could say -- again  
4 depending on the volume, you could have an agreement that these  
5 are produced, and it doesn't waive any other privilege. That  
6 these are the openly ones he's interested in. You could at  
7 that point consider a 502(e) order, which would have also then  
8 address your issues concerning these other reports.

9           You could if you want to -- if he is doubtful, if  
10 Mr. Caro is doubtful that this is really privileged, you could  
11 have an agreement that he could have, you know, what's called  
12 sometimes a quick peak. Okay? With an agreement no waiver,  
13 here. Just look at this, and you can see it is privileged.  
14 People do that.

15           Without Mr. Caro getting the document, without any  
16 waiver of your claim of privilege. Those are different, you  
17 know, strategies that people may use if they want to try to  
18 address this. But whatever strategies you use, I want a report  
19 by July 31st about what documents are in an issue, and a  
20 proposal as to how we would go about that in terms of  
21 determining the claim of privilege.

22           And then we'll set the matter for a status on Friday,  
23 August 4th at 9:00 o'clock.

24           MS. BEDNAREK: Your Honor, while I could potentially  
25 have another -- I'm not available that day. While I could have



1 my co-counsel, I don't know her availability, so --  
2 (unintelligible) two that -- is there another that we could  
3 set?

4 THE COURT: Okay. And you know you're not available?

5 MS. BEDNAREK: I know I'm not available.

6 THE COURT: Okay.

7 MS. BEDNAREK: I'm out of the office.

8 THE COURT: All right. Jenny, we set something on  
9 August 7th at 9:30 today, right?

10 THE CLERK: Yes, we did, Judge.

11 THE COURT: August 7th, 9:00 o'clock.

12 Now, you know, to summarize, you're going to have this  
13 revised log by the end of this week. Maybe Monday.

14 MS. BEDNAREK: I will try real hard on Friday.

15 THE COURT: But then you -- by the 24th you'll meet  
16 and confer to go over what documents are in issue. And I would  
17 urge you to really think about some of these strategies for  
18 addressing the issues because, at least my experience in  
19 privileged log issues, is that oftentimes people aren't really  
20 so concerned with producing the information. It is not that  
21 they're concerned it says, oh, my God, we're cooked. It is  
22 that they don't want it to be deemed a waiver of privilege on  
23 the subject matter. So they're concerned about it.

24 But if that's the situation, you know, then there are  
25 different strategies that can be used, again, avoid the

1 privilege issue, whether it is a 502(e) order or a quick peak.  
2 So you might think about that.

3 But whatever the result is on the 24th -- on the 31st,  
4 you'll provide a written report that identifies the volume of  
5 documents that are in dispute on the privilege log. And in  
6 dispute I mean that Mr. Caro is seeking production of.

7 And propose a mechanism for resolving those issues.  
8 And depending on the volume, that may be a sampling process.

9 And then we will have a status to talk about that and  
10 other things on August 7th at 9:00 A.M.

11 In the meantime, the additional production that I  
12 talked about in terms of the documents and with respect to the  
13 defendants -- the identification of the documents referenced  
14 as a response to interrogatories, all of those are due July  
15 28th.

16 The materials concerning Ms. Voliva's resignation are  
17 due July 21st. Actually we made that the 28th as well. So  
18 we'll keep it on that same track.

19 And then we will add in to the order that the  
20 deposition of Plaintiff A, subject to the various protocols I  
21 have identified, will take place commencing at 10:00 A.M., on  
22 August 14th in my courtroom.

23 The deposition of the mother will take place August  
24 15th.

25 And the deposition of the father will take place by

1 August 31st.

2 And by the 18th the parties are to give me a status  
3 report indicating the date that's been agreed to for that  
4 deposition.

5 If there is no agreement, then I will set a date. And  
6 if I have to do that, the date will not be subject to change.

7 I think that that covers everything that we talked  
8 about this morning.

9 MS. BEDNAREK: We had said we would circle back to the  
10 limited waiver issue.

11 THE COURT: Right. I still don't see how I can give  
12 you a limited waiver. I mean, what you said to me is that the  
13 underlying material that's in those reports has been produced.

14 MS. BEDNAREK: The exhibits that were attached --

15 THE COURT: The exhibits.

16 MS. BEDNAREK: -- and then (unintelligible).

17 THE COURT: So I don't know if there are notes of  
18 interviews. I don't know what's in -- on the log, are there  
19 interview notes, things of that character?

20 MS. BEDNAREK: I don't have the list in front of me of  
21 the exhibits.

22 THE COURT. Well, I guess in the end if you're saying  
23 that there are other privilege documents that bear on those  
24 reports, that really don't need to be disclosed under a 502(b)  
25 analysis because in fairness it is not necessary, then you can

1 produce these. And, you know, if you need to have a dispute  
2 under 502(b), then we will have a dispute under 502(b). But I  
3 don't see how I can order the production of this and give you a  
4 protection under 502(e) where there is no agreement.

5 And as you say, I think, you know, one of the things  
6 that I have asked you about is, again, the role of the  
7 complaint manager who does not have to be an attorney. And so  
8 I think that one of the things you might want to address is  
9 whether the reports by the complaint manager in whole or in  
10 part are privileged. Is everything in there the work of an  
11 attorney or is it the work of underlying factual investigation?  
12 It would be no different if it was a non-attorney.

13 Obviously there is separate -- there is different  
14 sections. There is -- here's the report. There's -- and other  
15 sections. I don't think it is giving away any privilege, but  
16 there is a finding section and recommendation sections. They  
17 may not all be the same.

18 Again, I'm not making a ruling here. I'm suggesting  
19 things for you to think about it. And, you know, as necessary,  
20 you might want to do research, because if you have to litigate  
21 it, I'm going to want to know what you say the law is on that.  
22 Okay?

23 All right. Anything further this morning?

24 MR. CARO: Thank you, your Honor.

25 THE COURT: All right. One other thing, Mr. Caro,

1 without disclosing anything that you feel is inappropriate to  
2 disclose, can you tell us the status of your medical condition  
3 insofar it is a would bear on your ability to start coming to  
4 court or attending meetings other than remotely?

5 MR. CARO: I think at least through August I'm going  
6 to be undergoing examinations and testing. A week ago last  
7 Monday I had another ultrascan done. I haven't gotten the  
8 results back. And I have more exams to be submitted to. And  
9 the doctor says, you know, just stay here.

10 The last few days including today, I tend to be light  
11 headed, dizzy, and unstable on my feet.

12 So at least for the time being, until -- what should  
13 be done is decided, I'm staying put, and I would rather not  
14 travel -- personally would rather not travel in the heat.  
15 Although it is hot down here if I stay at home.

16 THE COURT: Uh-huh.

17 All right. Is there anything further?

18 MS. BEDNAREK: No, your Honor.

19 THE COURT: All right. I know that you have a  
20 discovery cutoff that looms, so you have got a lot of  
21 depositions coming up.

22 I think that, Mr. Caro, you ought to be talking with  
23 your local counsel to see, you know, what assistance, you know,  
24 he can give you on some of these matters.

25 And obviously defense counsel is willing to cooperate

1 in terms of arranging for some of these proceedings to take  
2 place remotely so that you can fully participate.

3 But I think that's something you need in fairness to  
4 address with your local counsel. Okay?

5 MR. CARO: I have. Local counsel (unintelligible).

6 THE COURT: All right. Very good.

7 All right. I'll talk to everybody then on August 7th.

8 MR. CARO: Thank you, your Honor.

9 MS. BEDNAREK: Thank you, your Honor.

10 THE COURT: Thank you.

11 (Which concluded the proceedings.)

12 CERTIFICATE

13 I certify that the foregoing is a correct transcript  
14 from the digital recording of proceedings in the above-entitled  
15 matter to the best of my ability, given the limitation of using  
16 a digital-recording system.

17  
18  
19 **/s/ Pamela S. Warren**  
20 Official Court Reporter  
21 United States District Court  
Northern District of Illinois  
Eastern Division

July 25, 2017  
Date

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